

February 25, 2022

VIA ECF

The Honorable Lorna G. Schofield
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007

Catherine McKoy, et al. v. Trump Corp., et al., 1:18-cv-9936 (LGS)

Dear Judge Schofield:

Pursuant to the Court's January 18, 2022 Fifth Amended Case Management Plan (Doc. No. 357), the parties write to update the Court on the status of the above-referenced action since the parties last filed a periodic joint status update letter on January 26, 2022 (Doc. No. 358).

Party Discovery. The parties have made progress in narrowing certain deficiencies that Plaintiffs had noted in Defendants' prior document productions. On February 11, 2022, Defendants made a production of 1,327 documents, and on February 16, 2022, Defendants made an additional production of documents. In addition, Defendants have stated that they expect to produce certain videos and photographs related to ACN in short order. Defendants have also stated that they are still addressing whether metadata is missing from their prior productions and, if so, why.

The parties continue to meet and confer about other document-related issues, and final meet-and-confer discussions are ongoing in an effort to narrow these disputes. In the event that the parties reach an impasse in those discussions, they anticipate that they may respectfully seek the Court's guidance with respect to these issues.

In addition, on February 23, 2022, Plaintiff served their Second Set of Interrogatories, which generally ask Defendants to identify any diligence that was done in connection with various representations about ACN, and their Second Set of Requests for Admission, which includes a single request for admission to confirm a representation from Defendants' counsel that Defendants had no policies or procedures that applied to their promotion of ACN.

Finally, on February 11, 2022, Plaintiffs offered deposition dates in April for all of the named Plaintiffs. Plaintiffs also requested deposition dates for the individual Defendants and for certain current and former employees of Defendant The Trump Corporation and related entities who were agreed ESI custodians. Defendants have stated that they will get back to Plaintiffs on this issue shortly.

Plaintiffs' nonparty discovery efforts. Plaintiffs provide the following update on their ongoing correspondence and meet-and-confers with nonparties to resolve outstanding discovery issues. (*See* Doc. Nos. 232, 260, 265, 273.) Defendants state that they generally have no knowledge as to the update because Plaintiffs have conducted such nonparty correspondence and meet-and-confers without Defendants' involvement.

First, as previously reported, non-party American Communications Network ("ACN") is in the process of engaging a discovery vendor and conducting email searches according to search terms, a custodian list, and date ranges that the parties have discussed. With respect to non-email documents and information responsive to Plaintiffs' subpoena, Plaintiffs sent a letter on

February 1, 2022, outlining significant deficiencies in ACN's limited production of such materials to date. Plaintiffs followed up on February 16, 2022, reiterating their availability to meet and confer, and asked for a response no later than Tuesday, February 22, 2022. ACN has not yet provided a response, but counsel has indicated it is forthcoming.

Second, Plaintiffs have completed the meet-and-confer process with the Marketing Consultants and ACN concerning the withholding of certain responsive documents from the Marketing Consultants' production. More specifically, the Market Consultants have withheld 16 communications between an ACN in-house lawyer and Ms. Butcher based on ACN's assertion that those communications are privileged, even though Ms. Butcher was not an ACN employee. Plaintiffs expect to file in the coming days a pre-motion letter concerning this issue.

Third, Plaintiffs have completed their on-site review of unaired footage from two episodes of *The Celebrity Apprentice*, and have designated certain footage (under 50% of the total footage) that Plaintiffs believe is relevant for copying, with Plaintiffs bearing the reasonable costs. Plaintiffs will provide digital copies to Defendants as Plaintiffs receive them.

Fourth, Plaintiffs have continued to meet and confer with counsel for the nonparty Success-branded entities ("Success Entities"). As previously reported to the Court, counsel for the Success Entities has represented that, of the 60,000 documents that are responsive to the search term "Trump," 10,000 fall within the timeframe relevant to the requests in Plaintiffs' subpoenas. Plaintiffs continue to meet and confer with the Success Entities to facilitate a production of those materials as soon as possible and reserve all rights.

Fifth, Plaintiffs have continued to meet and confer with counsel for The Curetivity Foundation ("Curetivity"). As previously reported, Curetivity has made an initial production of 13 documents. That meet-and-confer process is ongoing.

The parties will submit their next joint status letter on March 25, 2022.

Respectfully submitted,

/s/ Roberta A. Kaplan

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